

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No.11017/2020**

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)  
MISS FAREEHA PAUL ... MEMBER (E)

Mr. Talib Khan S/o Shamshad Khan R/o Moh: Gujjar Fatima, Tehsil &  
District Mardan.

... (Appellant)

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Civil Secretariat, Peshawar.
2. Director Elementary & Secondary Education, Peshawar.
3. District Education Officer, Mardan.

... (Respondents)

Mr. Javed Iqbal Gulbela  
Advocate

... For appellant

Mr. Asif Masood Ali Shah  
Deputy District Attorney

... For respondents

----

Date of Institution.....17.09.2020  
Date of Hearing.....06.03.2024  
Date of Decision.....06.03.2024

**JUDGMENT**

**RASHIDA BANO, MEMBER (J):**The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

**“On acceptance of this appeal the impugned termination order No.2454-73/DCU(M)EA-01 dated 16.03.2009 & Office Order No.2212/9 dated 18.03.2009 of the office of District Co-ordination Mardan may kindly be set aside and by doing so the Appellant may very graciously be reinstated into service with all back benefits. Any other relief not specifically asked for**



**may also graciously be extended in favour of the appellant in the circumstances of the case.”**

2. Brief facts of the case, as given in the memorandum of appeal, are that respondent department advertised posts of Primary School Teachers (PST) on 07.08.2008 in daily “Aaj” for which the appellant, being eligible, applied and after process of recruitment, he was appointed on Union Council basis at Government Primary School, Yahya Jadeed, Mardan, on 05.12.2008. He joined the service and was performing his duty upto the entire satisfaction of his high ups. Just after serving for four months, appointment order of the appellant, alongwith that of others, was cancelled. Other colleagues of the appellant filed service appeal before this Tribunal which was allowed and they were reinstated into service. Appellant filed writ petition which was disposed of with direction to approach proper forum on 16.06.2020. He filed departmental appeal on 17.06.2020, which was not responded within statutory period, hence the instant service appeal.

3. Respondents were put on notice, who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for appellant argued that appellant has not been treated in accordance with law, hence his rights secured and guaranteed under the constitution are badly violated. He argued that the impugned termination order is illegal, wrong, void ab-initio and against the rules, hence not tenable in the eyes of law. He further argued that no proper inquiry was conducted in the case of appellant nor the appellant was heard in person, thus he was

condemned unheard. He further argued that no charge sheet, statement of allegation, show cause notice, inquiry dispensation order, final show cause notice was issued to the appellant which is mandatory requirement of law. He therefore, requested that instant appeal might be accepted as prayed for.

5. Conversely, learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further argued that competent authority cancelled all the irregular appointments made in violation of recruitment policy and prescribed procedure i.e without departmental selection committee, tests, interview and merit during the incumbency of Mr. Ahmad Hussain E.D.O (E&SE) Mardan. He further argued that departmental appeal as well as service appeal is barred by time, therefore, he requested for dismissal of instant appeal.

6. Perusal of record reveals that respondent department advertised PTC posts in newspaper i.e. daily "Aaj" dated 07.08.2008 applications from eligible candidates. Appellant also applied & after recruitment process, he was appointed as PTC (BPS-7) in respondent department vide order dated 05.12.2008 after fulfilling codal formalities. He started performing his duties but just after 4 months of issuance of appointment order of the appellant, same was withdrawn vide order dated 16.03.2009 on the ground of violation of recruitment policy and rules. Appellant alleged that his colleagues filed departmental appeal against the said order which was dismissed and service appeal against appellate order was accepted by this Tribunal, but he failed to produce the said appeal, which was filed by his colleagues, challenging the validity of withdrawal of appointment order dated 10.03.2009 that and was set-

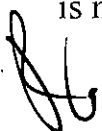
aside by this Tribunal in service appeal. Admittedly, impugned order of withdrawal of appointment of appellant, along with others was passed on 16.03.2009, which was challenge in departmental appeal by the appellant on 17.06.2020, which is hopelessly barred by time.

7. It is a well-entrenched legal proposition that when an appeal before departmental authority is time barred, the appeal before Service Tribunal would be incompetent. In this regard reference can be made to cases titled AnwarulHaq v. Federation of Pakistan reported in 1995 SCMR 1505, Chairman, PIAC v. Nasim Malik reported in PLD 1990 SC 951 and State Bank of Pakistan v. Khyber Zaman & others reported in 2004 SCMR 1426.

8. Although appellant approach Worthy Peshawar High Court Peshawar in writ Petition No 5408-P/2009 which too was dismissed vide order dated 16.06.2020 being hit by the principle of latches i.e. time barred, which read as under;

***“The petitioner remained in service for the period of ¾ months, thereafter, his services were cancelled somewhere in year, 2008 and, thereafter, though the other appointees had challenged the cancellation order before this court as well as before the Service Tribunal. Be that as it may, without discussing merits of the case of rest of appointees, who had availed the appropriate remedy, admittedly, undisputedly undeniably from 2008 till filing of this petition, i.e. 8.10.2019, the petitioner has never approached to the appropriate forum for seeking redressal against order considering himself aggrieved therefrom, therefore, the instant petition being hit by the principle of latches, is hereby dismissed. However, the petitioner is at liberty to seek appropriate remedy from the competent forum, if he so desired.*”**

9. Respondent submitted order of worthy Peshawar High Court in respect of factum of filing of appeal by other colleagues of the appellant which is mentioned in these words;



*"However, his other colleagues filed Service Appeal No.1105/2009 titled Gul Jehan Vs. The Secretary, Literacy and Secondary Education, Khyber Pakhtunkhwa, before the Khyber Pakhtunkhwa, Service Tribunal, which was decided on the basis of judgment rendered in writ petition with the following observations:-*


*"Since the appointments made are proved to have been made in derogation of merit and relevant rules through an inquiry conducted under the aegis of the Provincial Government, no pick and choose can be made by this Court while exercising jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, even if it cannot be refuted that some of the appointees may have been appointed on merit. Since all the vacancies have been advertised afresh and the petitioners would be at liberty to apply for them, we would not like to pass any order in this behalf. This petition being without merit is dismissed".*

*The Service Tribunal while discussing judgment of this court decided the service appeal on 10.02.2011. The operative part of the judgment of Service appeal is reproduced as under:*

*"In view of the above, we see no merit in this appeal as the order of High Court has not been challenged before the Hon'able Supreme Court of Pakistan, therefore, the same is very much in the field. The appeal is not maintainable which is hereby dismissed."*

10. For what has been discussed above, the appeal in hand is incompetent, hence dismissed. Costs shall follow the event. Consign.

11. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 6<sup>th</sup> day of March, 2024.

  
(Fareeha Paul)  
Member (E)

  
(Rashida Bano)  
Member (J)